IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2120 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARSHAD MANEKLAL SONI

Versus

COMMISSIONER OF POLICE RAJKOT

Appearance:

1. Special Civil Application No. 2120 of 2002

MR PRAVIN GONDALIYA for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 13-1-2002 passed by the

Police Commissioner, Rajkot City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mr.S.J.Dave, for the respondents. I have also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation through advocate to the authority on 21-1-2002 and thoguh same has been received by the authority on 24-1-2002, it was rejected on 30-1-2002 which was communicated to the detenu vide communication dated 31-1-2002 and hence, there is a delay in deciding the representation and communicating the same to the detenu. In this connection, he has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

He has submitted that the petitioner is a co-detenu of an offence wherein another detenu has been released by this Court in Special Civil Application No.1823 of 2002 by the judgment and order dated 26-4-2002 and hence, present detenu should also be granted same benefit.

4. In the present case, it appears that the detenu has sent the representation on 21-1-2002 to the authority and it was rejected by the authority on 30-1-2002, same has been communicated to the detenu on 31-1-2002 and hence, there is a delay in deciding the representation and communicating the same to detenu. However, no explanation has been putforward by the authority explaining satisfactorily the said delay. Since no explanation has been putforth by the concerned authorities for the said delay, the order of detention is illegal and the same cannot be sustained. Since a co-detenu has been released by this Court, on the ground of parity also, present detenu is entitled to be released.

5. The petition is allowed. The impugned order of detention dated 13-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Harshad Maneklal Soni is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

rajendra/